Application

for

EXTENSION OF TIME IN WHICH TO FILE

PETITION FOR CERTIORARI

No. 1700 Misc. O. T. 1967

DISPOSITION: DATE:

DATE	MEMORANDUM
3/11/68	Filed
3/12/68	Granted until 4/15/68 by Stewart, J.

OFFICE OF THE CLERK

OCTOBER TERM, 19 ..

CASE NO. ...

ROBERT LEROY PRUETT

v. OHIO

TO: MR. JUSTICE STEWART

Application for an extension of time within which to file a petition for a writ of certiorari.

Time expires: March 19, 1968

Extension Requested: May 17, 1968
(59-day extesnion requested)

Reason: This is a capital case and counsel are court appointed. Counsel were admitted recently to the bar of this Court and were not familiar with the practice and proceedure before this Court.

M. Rodak, Jr.

Supreme Court of the United States

No. ---------- , October Term, 1967

ROBERT LEROY PRUETT,

Petitioner,

vs.

OHIO

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 15, 1968.

Associate Justice of the Supreme Court of the United States

Dated this 12th day of March, 1968.

IN THE

SUPREME COURT OF THE UNITED STATES
TERM 1968

NO.

ROBERT LEROY PRUETT

PETITIONER

-against-

~~UNITED STATES OF AMERICA~~ OHIO

RESPONDENT

APPLICATION FOR EXTENSION OF TIME IN WHICH
TO FILE PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE POTTER STEWART
JUSTICE OF THE UNITED STATES SUPREME COURT
AND CIRCUIT JUSTICE FOR THE SIXTH JUDICIAL CIRCUIT

The petitioner herein respectfully applies for an extension of time within which to file a petition for writ of certiorari to review the judgment of the Court of Appeals for the Seventh Appellate District of the State of Ohio and the Supreme Court of the State of Ohio in the above entitled proceeding. The judgment of the Ohio Supreme Court refusing to hear this cause was entered on December 20, 1967, and the time in which to file such a petition will expire on the 19th day of March, 1968. This application requests that the time be extended from March 19, 1968 to and including the 17th day of May, 1968.

RECEIVED
MAR 11 1968
OFFICE OF THE CLERK
SUPREME COURT, U.S.

By its order filed December 20, 1967, the Ohio Supreme Court refused to review the judgment of the Court of Appeals of the Seventh Appellate District of Ohio affirming a judgment of conviction of murder in the first degree of the Court of Common Pleas of Ashtabula County, Ohio, under which the death penalty was imposed. The section of the Ohio Revised Code alleged to have been violated by the petitioner is O.R.C. 2901.01. The jurisdiction of this Court rests on 28 U.S.C.A. 1257 (3). This case involves the conviction of the petitioner under Section 2901.01 of the Ohio Revised Code which reads in part as follows:

> "No person shall purposely, and either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate rape, arson, robbery, or burglary, kill another."

The Ohio Statute carries with it the death penalty and the petitioner was convicted without a recommendation of mercy, and sentenced to death. The primary issues involved in this case are as follows:

(1) An illegal seizure and search of petitioner's motor vehicle.

(2) The allowance by the Court of an amendment to the indictment after the trial had commenced by adding a second count alleging a killing while attempting to perpetrate rape. The first count alleged a killing while perpetrating rape and this was the count returned by the Grand Jury. The second count, however, was not returned by the Grand Jury but was simply added to the indictment on motion of the State.

(3) Statement made by the petitioner permitted into evidence without petitioner having been effectively warned of his constitutional rights.

(4) Juror, prior to being sworn as juror and permitted to sit in the case, made a statement to other prospective jurors, that he was of the opinion that the petitioner was guilty, the petitioner thereby being deprived of a fair and impartial trial as afforded by the Constitution of the United States.

(5) Error on the part of the trial Court in admitting evidence of alleged prior offenses committed by petitioner, there being no convictions of the same.

Counsel representing petitioner were only admitted to practice before the United States Supreme Court, to-wit: on the 7th day of March, 1968, and were unfamiliar with practice and procedure before the Court, making additional time necessary for counsel to prepare the petition for writ of certiorari and brief supporting same. The petitioner in this case being indigent, the undersigned counsel were appointed to defend him and have carried the burden of this case for a period of between three and four years.

The request for an extension of time will in no way delay consideration of the case by this Court, it being represented to counsel that should the Court grant the petition for a writ of certiorari, the case could not be heard on its merits before the Fall 1968 Term of this Court.

Attached hereto are copies of the order of the Supreme Court of Ohio dismissing the appeal sua sponte, the mandate of the Supreme Court of the State of Ohio remanding the cause to the Court of Common Pleas of Ashtabula County, Ohio, and the journal entry of the Supreme Court of the State of Ohio staying execution of the death sentence pending the timely filing of an appeal to the Supreme Court of the United States and ordering that if such appeal is timely filed, the stay is to continue for an indefinite period, pending a final determination of the United States Supreme Court.

WHEREFORE, it is respectfully requested that the time in which to file a petition for writ of certiorari be extended to and include the 17th day of May, 1968.

Respectfully submitted,

NAZOR AND NAZOR

Leonard M. Nazor

Gordon L. Nazor

Gillmore Building
Ashtabula, Ohio 44004
ATTORNEYS FOR PETITIONER

March 8, 1968.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the Application for Extension of Time in Which to File a Petition for Writ of Certiorari on Joseph E. Mahoney, Prosecuting Attorney for Ashtabula County, Ohio, on the 8th day of March, 1968.

Gordon L. Nazor

OF THE FIRM
OF NAZOR AND NAZOR
ATTORNEYS AT LAW
GILLMORE BUILDING
ASHTABULA, OHIO

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 67 TERM
To wit: December 20, 1967

The State of Ohio,
Plaintiff-Appellee,

vs.

Robert LeRoy Pruett,
Defendant-Appellant.

No. 41163

APPEAL FROM THE COURT OF APPEALS

for ASHTABULA *County*

This cause, here on appeal as of right from the Court of Appeals for CUYAHOGA *County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.* and it appearing to the Court that the date heretofore fixed for the execution of the judgment and sentence of the Court of Common Pleas is now past, this Court proceeding as required by law does hereby fix the 9th day of February, 1968, as the date for carrying said sentence into execution by the Warden of the Ohio Penitentiary, or in his absence by the Deputy Warden, in accordance with the statutes in such case made and provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this Court be duly certified to the Warden of the Ohio Penitentiary and the Warden make due return thereof to the Clerk of the Court of Common Pleas of Ashtabula County.

It is further ordered that the appellee recover from the appellant its *costs herein expended; that a mandate be sent to the* COMMON PLEAS COURT *to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for* ASHTABULA *County for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this day of 19

Clerk

Deputy

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 67 TERM
To wit: December 20, 1967

The State of Ohio,
Plaintiff-Appellee,

vs.

Robert LeRoy Pruett,
Defendant-Appellant.

No. 41163

MANDATE

To the Honorable COMMON PLEAS COURT
Within and for the County of ASHTABULA, *Ohio, Greeting:*

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed, sua sponte, no substantial constitutional question involved.

It is also ordered that the execution date be set for Friday February 9, 1968.

THOMAS L. STARTZMAN,
Clerk

..... *19*.....

.....

..... *Deputy*

RECORD OF COSTS

Docket Fee . . . . . $ 20.00 *Paid by* Nazor & Nazor
Docket Fee . . . . . $ *Paid by*
Docket Fee . . . . . $ *Paid by*
Printing Record . . . . . $ *Paid by*
Supplemental Record . . $ *Paid by*
Sheriff's Costs . . . . . $ *Paid by*
Sheriff's Costs . . . . . $ *Paid by*

THE STATE OF OHIO,
City of Columbus.

19 68 TERM

To wit: Thursday, January 4, 1968

The State of Ohio,
Plaintiff-Appellee,

vs.

Robert LeRoy Pruett,
Defendant-Appellant.

No. 41163

ENTRY

Upon consideration of the motion, filed by counsel for Appellant, to stay the execution of sentence pending the timely filing of an appeal to The Supreme Court of the United States, it is therefore

ORDERED that the execution of sentence be, and hereby is, stayed pending the timely filing of an appeal to The Supreme Court of the United States, and it is further ordered that if such appeal is timely filed, this stay will continue for an indefinite period pending final determination by The Supreme Court of the United States.

It is further ORDERED that the Clerk of this Court shall forthwith send a certified copy of this entry staying execution to the Warden of the Ohio Penitentiary, who shall acknowledge receipt thereof.

Kingsley Taft
CHIEF JUSTICE

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No.....Page.....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 4th *day of* January, *19* 68

THOMAS L. STARTZMAN *Clerk.*

By Jane L. Jessup *Deputy.*